**THE HONOURABLE SRI JUSTICE J. CHELAMESWAR**
**AND**
**THE HONOURABLE SRI JUSTICE D. APPARAO**

**W.P. NO. 14079 of 2006**

**Dated: 11.07.2006**

Between:-

M/s. Sudha 35 MM & 70 MM, Delux Cinema Theatres,
Shalibanda, Hyderabad, represented by its Managing Partner,
Sri K. Abhinaya Reddy s/o K. Satyanarayana Reddy,
Aged about 33 years, R/o 2-6-207/1, Venkatreddy Colony,
Sikh village, Secunderabad.

…Petitioner

And

1. The Commissioner, Commercial Tax, A.P. Hyderabad
2. The Deputy Commercial Tax Officer, Charminar Circle, 9th floor, Gaganvihar, Nampally, Hyderabad
3. Union Bank of India, Kandikal Gate, Hyderabad, represented by its Branch Manager.

…Respondents.

**THE HONOURABLE SRI JUSTICE J. CHELAMESWAR**
**AND**
**THE HONOURABLE SRI JUSTICE D. APPARAO**

**W.P. NO. 14079 of 2006**

**O R D E R** (per Hon'ble Sri Justice J. Chelameswar)

The petitioner, which is a partnership firm running cinema two theatres in the city of Hyderabad filed the present writ petition.

According to the affidavit filed in support of the writ petition, the two cinema theatres run by the petitioner-firm were closed down for various spells between 18.5.1984 and 25.04.1985 (the details of which are not given in the writ petition) because of imposition of curfew by the Government in Hyderabad city at those points of time. It appears that the Association of the Film Exhibitors made a representation to the Government in the year 1985 requesting the Government to exempt all the theatres located in the Hyderabad city, whenever they are closed down either because of the curfew or some other reason, from payment of Entertainment Tax. The Government of Andhra Pradesh issued G.O. Ms. No. 752, Revenue (S) Department, dated 4.7.1985, laying down the guidelines, which are to be kept in mind while considering the applications for grant of exemption. Closing down of the theatre due to curfew, break down in law and order is one of the relevant considerations for grant of exemption. However, the power to grant exemption under the Entertainments Tax Act was exclusively with the State Government under Section 19-A of the Andhra Pradesh Entertainments Tax Act, 1939 (for short 'the Act'). In fact, in the above mentioned G.O., a categorical recital is made at para-2 which reads as

follows:-

> "Government have examined the matter. They consider that it is not legally permissible to delegate the power of exemption to any lower authority by the Government. For the purpose of considering the representation from the proprietors of entertainments under Section 19-A of the Andhra Pradesh Entertainments Act requesting exemption from payment of the amount of tax payable per week under Section 5 of the Andhra Pradesh Entertainments Tax Act, 1939, the Government hereby lay down the following guidelines."

The Government was conscious of the fact that the power of exemption could not be delegated to any lower authority by any legally permissible mode. At any rate, it did not chose to delegate the power. Whether such an understanding is right or not is not the question before us.

It appears that the petitioner claimed waiver of collection of tax for the various periods between the above-mentioned dates. The 2nd respondent-Deputy Commercial Tax Officer, Charminar Circle, Hyderabad, by his proceedings, dated 10.12.1999, passed an order directing the A.C.T.O. to extend the exemption granted in G.O. Ms.No. 177, Revenue (CT-III) Department, dated 21.2.1994, to the petitioner theatres. It is to be mentioned here that G.O. Ms. No. 177, dated 21.2.1994, is a subsequent G.O. issued by the State in supercession of G.O.Ms. No. 752, Revenue (S) Department, dated 4.7.1985, which contain similar contents (The details of which are not necessary for the present purpose). Strictly speaking, if at all the exemption is to be considered by any authority, the same has to be considered in accordance with G.O. Ms. No. 752, but not in accordance with G.O.Ms. No. 177.

The above-mentioned order of 2nd respondent came to be considered by the 1st respondent in his proceedings, dated 29.05.2003. The 1st respondent-Commissioner, in purport, of exercise

of powers under Section 9-C of the Andhra Pradesh Entertainments Act, 1939, chose to revise the order of

2nd respondent as follows:-

> "Therefore, under powers vested in me under Section 9-C of the Andhra Pradesh Entertainments Act, 1939, I hereby revise the order of the Deputy Commissioner (CT), Charminar passed in the reference 1st cited by withdrawing the exemption of Rs. 2,02,300/- granted to M/s Sudha 35 MM. "

In our opinion, both the 1st and 2nd respondents proceeded on a wrong premise of the law. Neither of the respondents had authority either to grant or reject the exemption. The authority to grant exemption was exclusively under Section 19-A of the Act which reads as under:-

> **Power to exempt tax payable under Section 5**:-
>
> The State Government may, by notification in the Andhra Pradesh Gazette, and for reasons to be specified therein, exempt, whether prospectively or retrospectively, any proprietor or class of properties (from the payment of the amount of tax) (referred to in Section 4 or in sub-section (1) of Section 5) or any part thereof subject to such conditions and restrictions as they may deem fit to impose and may in like manner vary or cancel such notification).

G.O.Ms. No. 752, Revenue (S) Department, dated 04.07.1985 only contemplates the respondents 1 and 2 to examine the claim of exemption within the parameter specified under the said G.O. and forward the application to the Government. In fact, the procedure regarding the consideration and recommendation mentioned in the said G.O. is as under:-

> "The following procedure shall be followed in regard to the consideration and recommendation of the application for grant of exemption from payment of the amount of tax payable per week under Section 5 of the Andhra Pradesh Entertainments Act, 1939 to the Government.
>
> i) The Entertainments Tax Officer shall examine the application, submitted within the stipulated period,

verify the correctness, completeness and propriety of the claim for relief and forward the application along with his specific recommendations to the Commercial Tax Officer within a week from the date of receipt of application.

ii) The Commercial Tax Officer shall examine and forward the same along with his recommendations to the Deputy Commissioner, within a week from the date of receipt of the application from the Entertainments Tax Officer concerned.

iii) The Deputy Commissioner in turn shall examine and forward the same along with his recommendations to the Commissioner (Commercial Taxes) within a week from the date of receipt of the application from the Commercial Tax Officer concerned.

iv) The Commissioner of Commercial Taxes shall examine and forward the application along with the specific recommendations to the Government within a week from the date of receipt of the application from the Deputy Commissioner of Commercial Taxes concerned."

From a reading of sub-clause (iv) of Clause 10, it is clear that it is only the Government, which can exempt or reject, but not either 1st or 2nd respondents. The power under Section 9-C of the Act, is wholly alien to the facts situation. However, such was the understanding of the respondents. Aggrieved by the decision of the 1st respondent in purporting to cancel the exemption granted by the 2nd respondent, the petitioner earlier approached this Court in W.P. No. 4624 of 2000, which stood dismissed by an order of a Division Bench, on 31.08.2005 and the order has became final.

It appears that the petitioner made another application to the State of Andhra Pradesh, which is not made a party to the present writ petition, praying that the case of the petitioner for the periods mentioned above be considered and an exemption be granted, which is said to be pending. In the meanwhile, it appears that the respondents issued a recovery notice under Section 10 of the Andhra

Pradesh Entertainments Tax Act, 1939, dated 07.07.2006 and hence the present writ petition with the prayer as follows:-

> "This Hon'ble Court may be pleased to issue a writ, order or directions more particularly one in the nature of Writ of CERTIORARI or any other appropriate writ, call for the records, quash/set aside the impugned notice under Section 10 of the Andhra Pradesh Entertainments Tax Act, 1939, dated 07.07.2006 issued by the 2nd respondent……"

We do not propose to examine the question whether the Government have the power to consider the application of the petitioner on the face of the fact that an earlier application of the petitioner for the same relief stood rejected at the intermediate stage itself. We are of the opinion that the proceedings of the 1st respondent referred to earlier, dated 29.5.2003, in our view, are only the intermediary proceedings contemplated under Clause 10 (iv) of the G.O.Ms. No. 752, Revenue (S) Department, dated 04.07.1985, in substance, declining to recommend the case of the petitioner for exemption as per the scheme contained in G.O. Ms. No. 752. Whether the rejection was otherwise or not is no more a *res integra,* in view of the judgment of this Court referred to earlier.

In the circumstances, whether the Government can entertain a fresh application for grant of exemption or not. as already mentioned, we are not proposing to examine in this writ petition. It is sufficient to mention that mere pendency of an application for exemption does not confer any right on the petitioner enabling him to obtain such a relief such as the one sought in the writ petition.

The impugned demand notice is made pursuant to a valid assessment order, which could not be set aside.

Hence, we do not find any merit in this writ petition.

The writ petition is accordingly dismissed at the stage of admission itself. No costs.

After the orders are pronounced, the learned counsel for the petitioner prayed that he may be granted reasonable time for making payment of tax demanded.

Heard the learned Government Pleader for Commercial Taxes.

In the circumstances, we are of the opinion that the respondents shall not enforce the impugned demand notice for a period of four weeks from today and if the petitioner does not pay the amount thereafter, it is open for the respondents to enforce the demand notice in accordance with law.

_____

J. CHELAMESWAR, J

_____

D. APPARAO, J

11th July, 2006
vp